IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 806 of 1993

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NARAINRAO SHANKERRAO CHAUHAN

Versus

DIVISIONAL CONTROLLER, G.S.R.T.C.

Appearance:

1. Special Civil Application No. 806 of 1993

MR JS BRAHMBHATT for the Petitioner

MR JM BAROT for MR HS MUNSHAW for the Respondent

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 22/09/2004

ORAL JUDGEMENT

The petitioner challenges the judgment and award

dated 13th May, 1999 passed by the learned Labour Judge, Vadodara in Reference (LCV) No.865/1984 renumbered as Reference (LCV) No.910/1987.

In the year 1971 the petitioner was appointed by the respondent - Gujarat State Road Transport Corporation (hereinafter referred to as "the Corporation") as Driver. On 22nd June, 1981 the petitioner proceeded on leave without prior sanction. His application for leave from 23rd June, 1981 to 7th July, 1981 was not granted. After 7th July, 1981 also, the petitioner remained on leave without prior sanction. Several notices issued by the Corporation were either not received by the petitioner or the petitioner expressly informed the Corporation that he was unable to attend the duty. Pursuant to his continuous absence from service since 23rd June, 1981, a disciplinary proceeding was initiated against the petitioner. The petitioner did submit his reply to the charge-sheet. He denied the imputation of charge but refused to attend the disciplinary proceeding or to report for duty. By order dated 16th October, 1981 made by the disciplinary authority, the petitioner was ordered to be dismissed from service. The said order was confirmed in the departmental appeals.

Feeling aggrieved, the petitioner raised the industrial dispute. The same was referred to the Labour Court, Vadodara and numbered as 865/1984. The said Reference was not attended by the petitioner. It came to be dismissed for non-prosecution on 13th December, 1985. By order dated 21st December, 1987, the said Reference was restored and renumbered as 910/1987. In the said Reference the petitioner filed pursis. He conceded that the disciplinary proceeding was conducted in accordance with the relevant rules. However, he joined issue on finding of guilt recorded against him. The learned Labour Judge confirmed the finding of guilt recorded against the petitioner. The learned Judge also took note of the past conduct of the petitioner and discussed each incident of punishment imposed upon the petitioner for such conduct. Considering the continuous absence of the petitioner from service since 23rd June, 1981; his refusal to attend the disciplinary proceeding; his conduct and the past record, the learned Judge refused to exercise powers under Section 11-A of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). The claim made by the petitioner was accordingly dismissed by impugned judgment and award.

Learned advocate Mr.Brahmbhatt has submitted that for a minor misconduct of absence from service a major

punishment of dismissal from service could not have been imposed upon the petitioner. He has submitted that the Labour Court has erred in relying upon the past record of the petitioner and, on conduct of the petitioner after the subject period, the Labour Court has thus taken into consideration extraneous materials in refusing to exercise power vested by Section 11-A of the Act. He has relied upon the judgment of the Division Bench of this Court in the matter of Rajnagar Textile Mills v/s. Dahyabhai Mohanbhai Diwan (Special Civil Application No.4583/1992 decided on 19th August, 1992; Coram: S.B.Majmudar J. as he then was and S.D.Shah, J.). Mr.Brahmbhatt has particularly relied upon the quote from the judgment in the matter of A.N.T. Mills v/s. Textile Labour Association [29(2) GLR 1324]. He has submitted that in case where the delinquent is visited with punishment which is utterly disproportionate to the proved misconduct, the Labour Court would be entitled to interfere on the ground that the order is lacking in propriety. He has also relied upon the judgment of the Karnataka High Court in the matter of Karnataka State Road Transport Corporation v/s. B.M.Patil [1996(2) LLJ 536]. He has particularly relied upon the observation that "...the disciplinary authority should reserve the punishment of dismissal only in extreme cases. It is where the exercise of discretion by the disciplinary authority steps in. It cannot and should not act like a robot, its justice should be moulded with humanism and understanding."

It is indisputable that the petitioner remained absent from service continuously since 23rd June, 1981. He did not answer the notices given by the Corporation. He continued to remain absent from service under the guise that his mother was sick at Ujjain. However, he failed to produce proof of such sickness. The petitioner also failed to prove that he had gone to Ujjain and was not present at his residence at Vadodara. Considering the conduct of the petitioner, I am of the view that the learned Labour Judge has rightly refused to exercise powers conferred upon him by Section 11-A of the Act.

No ground for interference is made out. Petition is dismissed. Rule is discharged. There shall be no order as to cost.

(Ms. R.M.Doshit, J.)

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